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Paper No. 6

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In re Application of :
Thompson et al. :
Application No. 08/482,283 : DECISION DISMISSING PETITION
Filed: June 7, 1995 :
Attorney Docket No. 04189.0083-06 :

This is a decision on the communications filed January 24, 1996 and May 29, 1996, which are being treated as a petition requesting that the above-identified application be converted from a divisional application under 37 CFR \$1.53 to a divisional application under 37 CFR \$1.60.

On June 7, 1995, the application was deposited.

On August 17, 1995, Application Division mailed a Notice stating that the basic filing fee, and an Oath or Declaration were missing.

On January 24, 1996, a communication was received indicating that petitioners had filed a response with a petition to convert a Rule 1.53 divisional application into a Rule 1.60 divisional application on January 17, 1996. However, according to the communication, this filing listed the wrong serial number on the papers. On May 29, 1996, at the request of the Office of Petitions for copies of the papers originally dated January 17, 1996, petitioners faxed a copy of the petition which was allegedly submitted on January 17, 1996 as well as a new **Change of Address and Associate Power of Attorney**.

In the petition received on May 29, 1996, petitioners request the divisional application be converted from a filing under 37 CFR \$1.53 to a divisional application under 37 CFR \$1.60. Petitioners state they were submitting a true copy of a declaration from prior application Serial No. 07/850,675; and that they were including checks to cover the an extension of time, the basic filing fee, a surcharge and a petition fee, as well as a copy of the original Notice. Finally, there was an authorization to charge counsel's deposit account for any other

fees owed. However, the papers received May 29, 1996 did not include a copy of the Notice to File Missing Parts, a true copy of a declaration from application Serial No. 07/850,675 nor copies of any checks which were allegedly submitted along with the original petition. To date, these documents have not been received.

A review of the record of the misidentified application serial number as stated in the January 17, 1996 communication reveals the application does not contain the copy of a petition nor any accompanying document copies. It is also unclear as to whether any fees for this application were applied to the misidentified application.

At present, the petition must be dismissed. It appears the application may be abandoned pending proof of the timely filing of the missing parts in response to the Notice mailed August 17, 1995. However, this decision is made without prejudice to reconsideration upon the filing of a request therefor. The request for reconsideration should be accompanied by:

- ✓ 1) supporting documentation regarding a timely submission to the Notice mailed August 17, 1995, including copies of the declaration, the Notice, copies of the fee checks (both front and back), as well as the post card receipt (MPEP \$503) indicating the date on which the original petition and extension of time were received by the Office;
- ✓ 2) a supplemental request to convert the divisional application from a filing under 37 CFR \$1.53 to a filing under 37 CFR \$1.60, including the requisite true copy statement regarding the application papers submitted on filing, if such a statement is true. Otherwise, application papers in compliance with 37 CFR \$1.60 are required (see 37 CFR \$1.60(b)(4)). The petitioners have only provided a statement the copy of the declaration was a "true copy" of the declaration from application Serial No. 07/850,675 which does not comply with the requirements found in the rules; and
- ✓ 3) a statement explaining the priority claim to application Serial No. 08/319,413 made in the May 29, 1996 petition which is an application not previously listed in the priority claim for the instant application. A review of the previous priority applications suggest the petition may refer to an incorrect serial number.

The \$130.00 petition fee will be charged to counsel's deposit account in due course.

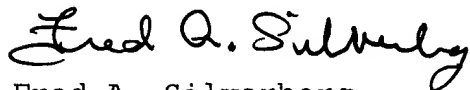
A request for reconsideration (no further petition fee is required) as outlined above, must be filed within **TWO MONTHS** of the date of this decision in order to avoid further processing of the application as an abandoned application. The response should be directed to the attention of the Office of the Deputy Assistant Commissioner for Patent Policy and Projects, Special Program Law Office and be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Special Program Law Office

By hand: One Crystal Park, Suite 520
2011 Crystal Drive
Arlington, VA 22202

Any inquiries related to this decision should be directed to Josie A. Ballato at (703) 308-6915, or if not available, to the undersigned at (703) 305-9282.



Fred A. Silverberg
Senior Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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